

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>KEVIN MITCHELL</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	
	)	<b>Civil Action No. 02-CV-4442</b>
<b>EXPERIAN INFORMATION</b>	)	
<b>SOLUTIONS, INC.</b>	)	
<b>and</b>	)	
<b>CBA INFORMATION SERVICES</b>	)	
<b>and</b>	)	
<b>BP/CITIBANK SD</b>	)	
<b>and</b>	)	
<b>CAPITAL ONE BANK</b>	)	
<b>and</b>	)	
<b>CROSS COUNTRY BANK</b>	)	
<b>and</b>	)	
<b>DELL FINANCIAL SERVICES</b>	)	
<b>and</b>	)	
<b>ORCHARD BANK</b>	)	
<b>and</b>	)	
<b>PROVIDIAN FINANCIAL</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**ORDER**

AND NOW, this            day of            , 2003, upon consideration of Plaintiff's Motion to Compel Defendant CBA Information Services' Answers to Plaintiff's Interrogatories and Request For Production of Documents, it is hereby ORDERED that Defendant CBA Information Services shall provide Plaintiff with its answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents, without objections, within five (5) days of the date of this Order or risk further sanctions upon application to the Court.

BY THE COURT:

	J.
Fullam, J.	

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<b>PROVIDIAN FINANCIAL</b>	)	
	)	
<b>Defendants.</b>	)	

**PLAINTIFF KEVIN MITCHELL’S MOTION TO COMPEL DEFENDANT CBA  
INFORMATION SERVICES’ ANSWERS TO PLAINTIFF’S INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff, Kevin Mitchell, by and through his undersigned attorneys, hereby moves this Honorable Court to enter the accompanying order compelling Defendant CBA Information Services (hereafter “CBA”) to provide Plaintiff with its answers to Plaintiff’s Interrogatories and Request for Production of Documents, without objections, and, in support thereof, alleges the following:

1. This is an action for damages brought by an individual consumer against the Defendants for violations of the Fair Credit Reporting Act (hereafter the “FCRA”), 15 U.S.C.

§1681 *et seq.*, *as amended*, and various other laws of the Commonwealth of Pennsylvania which was commenced by the filing of a Complaint on or about July 3, 2002, in the United States District Court For the Eastern District of Pennsylvania.

2. On July 16, 2002, Plaintiff served the Complaint upon the Defendant CBA.

3. On August 26, 2002, Defendant CBA served an Answer with Affirmative Defenses upon Plaintiff.

4. On October 28, 2002, Plaintiff forwarded their Self-Executing Disclosures to Defendant CBA pursuant to Rule 26(a) of the Federal Rules of Civil Procedure.

5. On October 28, 2002, Plaintiff forwarded a First Set of Interrogatories and Request For Production of Documents to Defendant CBA.

6. On March 4, 2003, having not received Defendant CBA's Answers to Plaintiff's Discovery Requests, Plaintiff's counsel sent a letter to Defendant CBA's counsel informing him that Plaintiff's counsel had still not received the untimely Answers to Interrogatories and Request for Production of Documents, and that Plaintiff would be forced to file a motion to compel if he did not receive them due to the approaching discovery and motions deadline. (A copy of Plaintiff's counsel's correspondence dated March 4, 2003 is attached hereto as Exhibit "A" and is incorporated herein).

7. On June 19, 2003, still having not received Defendant CBA's Answers to Plaintiff's Discovery Requests, Plaintiff's counsel sent another letter to Defendant CBA's counsel informing him that Plaintiff's counsel had still not received the untimely Answers to Interrogatories and Request for Production of Documents, and that Plaintiff would be forced to file a motion to compel if he did not receive them due to the approaching discovery and motions

deadline. (A copy of Plaintiff's counsel's correspondence dated June 19, 2003 is attached hereto as Exhibit "B" and is incorporated herein).

8. To date, Defendant CBA's has failed to provide Plaintiff with its answers to Plaintiff's First Set of Interrogatories and Request For Production of Documents.

9. Plaintiff suffers hardship and prejudice as a result of Defendant CBA's failure to provide him with pertinent and relevant discovery that he has requested.

10. Plaintiff has attempted in good faith to resolve this discovery dispute. Plaintiff's Rule 26.1(f) Certification of Counsel is attached.

11. To date, Defendant CBA has not indicated any intention to provide Plaintiff with these outstanding items, and Plaintiff respectfully requests that the Court enter the accompanying order compelling it to do so.

WHEREFORE, based upon the foregoing, Plaintiff Kevin Mitchell respectfully requests that this Honorable Court enter the accompanying Order compelling the Defendant CBA to provide Plaintiff with its Answers to Plaintiff's Interrogatories and Request For Production of Documents, without objections, within five (5) days of the date of this Order or risk further sanctions upon application to the Court.

**FRANCIS & MAILMAN, P.C.**

BY:

\_\_\_\_\_  
JAMES A. FRANCIS, ESQUIRE  
MARK D. MAILMAN, ESQUIRE  
Attorney for Plaintiff  
Land Title Building, 19<sup>th</sup> Floor  
100 South Broad Street  
Philadelphia, PA 19110  
(215) 735-8600

Dated: July 2, 2003

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>KEVIN MITCHELL</b>	)	
	)	
<b>Plaintiff,</b>	)	
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<b>DELL FINANCIAL SERVICES</b>	)	
<b>and</b>	)	
<b>ORCHARD BANK</b>	)	
<b>and</b>	)	
<b>PROVIDIAN FINANCIAL</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF KEVIN MITCHELL'S  
MOTION TO COMPEL DEFENDANT CBA INFORMATION SERVICES' ANSWERS  
TO PLAINTIFF'S INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

Defendant CBA should be compelled to provide Plaintiff with its Answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents, without objections, within five (5) days of the accompanying proposed order.

It is blackletter law that a party, upon reasonable notice to other parties and all persons effected thereby, may apply for an order compelling disclosure or discovery. Fed. R. Civ. P. 37.

On October 28, 2002, Plaintiff forwarded its First Set of Interrogatories and Request For Production of Documents to Defendant. To date, Defendant CBA has failed to provide Plaintiff

with its Answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents despite numerous requests by Plaintiff's counsel. Plaintiff's counsel on March 4, 2003 and June 19, 2003, sent letters to Defendant CBA's counsel informing him that Defendant CBA's Discovery answers were overdue and that Plaintiff would be forced to file a motion if Defendant CBA did not provide them.

To date, Defendant CBA has still not provided Plaintiff with its answers to Plaintiff's outstanding discovery requests.

Plaintiff suffers hardship and prejudice as he is unable to discover pertinent and relevant information that he has requested. As Defendant CBA has not indicated any intention to provide Plaintiff with these documents and information, the Court should enter the accompanying order compelling CBA to provide Plaintiff with its Answers to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, without objections, within five (5) days of the date of the order.

**FRANCIS & MAILMAN, P.C.**

BY:

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JAMES A. FRANCIS, ESQUIRE  
MARK D. MAILMAN, ESQUIRE  
Attorney for Plaintiff  
Land Title Building, 19<sup>th</sup> Floor  
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	)	
<b>Defendants.</b>	)	
	)	

**LOCAL RULE 26.1(f) CERTIFICATION OF COUNSEL**

The undersigned counsel of Plaintiff Kevin Mitchell ("Plaintiff"), certify, pursuant to Local Rule 26.1(f) that they have attempted in good faith to resolve this discovery dispute.

On March 4, 2003 and June 19, 2003, having not received Defendant CBA's Answers to Plaintiff's Discovery Requests, Plaintiff's counsel sent a letter to Defendant CBA's counsel informing him that Plaintiff's counsel had still not received the untimely Answers to Interrogatories and Request for Production of Documents, and that Plaintiff would be forced to file a motion to compel if he did not receive them due to the approaching discovery and motions deadline.

Notwithstanding the above, to date, Plaintiff has not received Answers to Plaintiff's First Set of Interrogatories and Requests for Production of Documents nor have Plaintiff's counsel been told by Defendant CBA's counsel when Plaintiff's discovery will be forthcoming.

**RESPECTFULLY SUBMITTED,**

**FRANCIS & MAILMAN, P.C.**

BY: \_\_\_\_\_  
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MARK D. MAILMAN, ESQUIRE  
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